

8/2/14

FILED

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

APR 30 2014
Phil Lombardi, Clerk
U.S. DISTRICT COURT

JIM LEE REMER,

Plaintiff,

vs.

**HARTFORD LIFE AND ACCIDENT
INSURANCE COMPANY,**

Defendant.

No. _____

14 CV - 202 TCK - TLW

COMPLAINT

1. Plaintiff, Jim Lee Remer (Remer) brings this cause of action against Hartford Life and Accident Insurance Company (Hartford) for violation of the Employment and Retirement Income Security act of 1974, as amended, **29 U.S.C. Section 1001**, et seq. (**ERISA**). Remer, an employee of American Airlines, was a participant in a “Welfare Benefit Plan Providing Group Long Term Disability”, pursuant to the terms of a “Group Long Term Disability Plan for Employees of TRANSPORT WORKERS UNION OF AMERICA”, as set forth at Page 34 in Policy No. GLT395086, (the Policy). This Complaint challenges the Defendant Hartford’s unlawful denial of Plaintiff Remer’s request for long term disability benefits despite clear and reasonable medical evidence demonstrating Remer’s qualification for such benefits, and in absence of credible evidence controverting same. Remer is filing this action to recover benefits due under the policy, to enforce his rights thereunder, and to recover costs and attorney fee as provided by **ERISA**.

Fees pd

2. This action arises as a result on an industrial accident occurring on November 15, 2010 at the American Airlines Maintenance and Repair Facility in Tulsa Oklahoma. On that date Plaintiff, employed as a full time agent/employee /servant of American Airlines, while working in the course of his employment and agency, slipped and fell in water that had been placed or spilled on the floor by another employee, injuring his back, neck, knees, hip, and elbow, with associated numbness in fingers and toes, severe headaches, and loss of perception, reasoning ability and memory. Plaintiff has been determined to be totally disabled under the guidelines of the Social Security Administration. Workers Compensation proceedings are pending.

3. Until November 15, 2010, Plaintiff was working full-time for American Airlines at the American Airlines Maintenance and Repair Facility in Tulsa Oklahoma. He has not worked at any occupation whatsoever since the industrial accident at the American Airlines facility on that date.

PLAINTIFF PARTICIPATION IN PLAN

4. Plaintiff Remer, at all times pertinent, was a participant within the meaning of *29 U.S.C. Section 1002 (2) (7)* in the group long term disability plan aforesaid.

JURISDICTION

5. This court has personal and subject matter jurisdiction over this case under provision of **29 U.S.C. Section 1132 (e)** and **(f)** because of Defendant's breach of its **ERISA** obligation to Plaintiff Remer.

RESIDENCE AND CITIZENSHIP

6. Plaintiff Remer was at all relevant times a resident and citizen of Tulsa, Tulsa County, State of Oklahoma.

7. Defendant Hartford has its corporate headquarters at 200 Hoopmeadow Street, Simsbury, CT. 06089.

TIMELINESS OF THIS APPEAL

8. The Policy contains a contractual statute of limitations. At Page 21 of the Policy, it is provided that legal action cannot be taken against Defendant Hartford more than three years after the date ***Proof of Loss is required to be given according to the terms of the Policy.*** On June 17, 2011, Transport Workers Union of America forwarded forms to Remer for a long term disability claim against Defendant Hartford. Such forms were timely completed by Remer and receipt was acknowledged by Defendant Hartford on by July 7 2011. This action, being filed within three years of July 17, 2011, is clearly filed within the contractual period of limitations set forth in the Policy.

THE ACCRUAL OF THE CAUSE OF ACTION

9. On August 23, 2012, Defendant Hartford requested additional information, stating that they did not want to delay Remer's claim for long term disability provisions. Such letter asked that Mr. Remer furnish additional information within 21 days, or by September 13, 2012.

10. In view of the above, Plaintiff maintains that this appeal is completed within the time limit set forth in the Policy, which would have been, at a minimum, three years from the date of first claim under the policy, June 7, 2011.

STANDING

11. Plaintiff Remer has standing to bring this action under ERISA *29 U. S. C. Section 1132 (a)*.

PLAN DESCRIPTION

12. The Plan is a group disability plan maintained by American Airlines through Transport Workers Union of America, and fully insured by the contract of insurance issued by Defendant Hartford, as aforesaid.

APPLICATION OF PLAN TO PLAINTIFF

13. The Plan's covered class includes Plaintiff.
14. As a full time employee, Remer was insured under the Plan.
15. The Policy issued by the Plan provides long term disability benefits for employees who meet all contractual provisions, including the policy definition of disability.

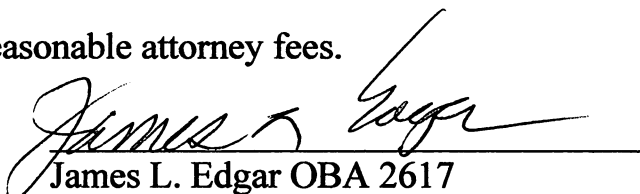
THE DENIAL OF CLAIM

16. On February 20, 2014, Defendant Hartford wrongfully denied the claim of Remer for long term care, by letter to the attorney for Remer. The denial purports to be based upon (1) information currently available (2) a co-morbid review by a nominee of Defendant Hartford, and (3) the policy provisions. The denial ignored clear evidence of existence of disability, and was rather based on the co-morbid review of physicians who did nothing but review reports of treating physicians.

REQUEST FOR EVIDENTIARY HEARING AND TRIAL BY COURT

17. Plaintiff alleges that, under the opinion in *Kappos v. Hyatt*, 2012 U. S. Lexis 3107, he is entitled to a trial of the issues limited only by the *Federal Rules of Evidence* and the *Federal Rules of Civil Procedure*, with no deference accorded to the administrative finding.

WHEREFORE, Plaintiff prays for judgment setting forth that he is entitled to long term disability payments under the policy, and that he have and recover his costs herein expended, including reasonable attorney fees.


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